

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-12-1-5-00035  
45-003-13-1-5-00786-16  
45-003-14-1-5-00784-16  
45-003-15-1-5-01003-16  
**Petitioner:** Code Rentals, LLC/Chris Schaap<sup>1</sup>  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-14-101-031.000-003  
**Assessment Years:** 2012-2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated the 2012 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on February 12, 2013. The PTABOA issued its notice of final determination on September 12, 2014. Petitioner then timely filed its Form 131 petition with the Board.
2. Petitioner initiated the 2013 appeal on May 22, 2014, the 2014 appeal on April 25, 2015, and the 2015 appeal on October 22, 2015. For each of those years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on September 12, 2016. Neither the ALJ nor the Board inspected the property.
5. Chris Schaap, member of Code Rentals, LLC, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Danny Cruz, Calumet Township Residential Supervisor, were sworn as witnesses for Respondent.

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<sup>1</sup> The 2012 appeal was filed by Chris Schaap for Code Rentals, LLC. The 2013-2015 appeals were filed by Chris Schaap.

**Facts**

- 6. The subject property is a single-family dwelling located at 7728 West 22nd Avenue in Gary.
- 7. Respondent determined the following assessments for the parcel under appeal:

Year	Land	Improvements	Total
2012	\$16,400	\$50,300	\$66,700
2013	\$11,700	\$48,300	\$60,000
2014	\$11,600	\$50,200	\$61,800 <sup>2</sup>
2015	\$16,500	\$33,200	\$49,700

- 8. Petitioner requested the following assessed values:

Year	Total
2012	\$44,175
2013	\$41,966
2014	\$37,770
2015	\$32,104

**Record**

- 9. The official record contains the following:
  - a. A digital recording of the hearing
  - b. Exhibits:

Petitioner Exhibit 1:	Appraisal by Roy Gouwens
Petitioner Exhibit 2:	2012 property record card (“PRC”)
Petitioner Exhibit 3:	2013 PRC
Petitioner Exhibit 4:	2014 PRC
Petitioner Exhibit 5:	2015 PRC

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<sup>2</sup> Mr. Cruz testified to the assessed values shown. Petitioner Exhibits 2-5 show values of \$67,200 for 2013 and \$68,800 for 2014.

Petitioner Exhibit 6:	Annual Adjustment of Assessed Values Fact Sheet
Respondent Exhibit 1:	PRC for the subject property
Respondent Exhibit 2:	Appraisal by Roy Gouwens
Board Exhibit A:	Form 131 petitions
Board Exhibit B:	Notices of Hearing
Board Exhibit C:	Hearing sign-in sheet

c. These Findings and Conclusions.

### **Burden**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
12. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value increased from \$60,800 in 2011 to \$66,700 in 2012, which is more than 5%. Respondent, therefore, has the burden of proof for 2012. Assigning the burden for the other years at issue will depend on the final determinations for each respective preceding year.

### Summary of Parties' Contentions

15. Respondent's case:
- a. Respondent conceded that the assessments were too high. Mr. Metz testified Respondent would stipulate to \$46,500 for 2012, \$45,900 for 2013, and \$46,600 for each of 2014 and 2015. *Metz testimony.*
  - b. Respondent contends that the Calumet Township Assessor's office sent out questionnaires to taxpayers that own rental properties so that they might develop a gross rent multiplier ("GRM"). Respondent contends that Mr. Schaap has not provided any of the requested information for the subject property. *Cruz testimony.*
16. Petitioner's case:
- a. Petitioner contends that the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Gouwens estimated a value of \$46,500 as of March 1, 2011. *Schaap testimony; Pet'r Ex. 1.*
  - b. In an attempt to trend the 2011 appraised value to the 2012 valuation date, Petitioner applied the market adjustment value of .95 shown on the 2012 PRC. Applying the .95 value to the \$46,500 appraisal estimate results in a proposed assessed value of \$44,175 for 2012. *Schaap testimony; Pet'r. Ex. 2.*
  - c. For 2013, the market adjustment value was .95. Applying the .95 factor to the 2012 value of \$44,175 results in a proposed assessed value of \$41,966 for 2013. *Schaap testimony; Pet'r Ex. 3.*
  - d. For 2014, the market adjustment value was .90. Applying the .90 factor to the 2013 value of \$41,966 results in a proposed assessed value of \$37,770 for 2014. *Schaap testimony; Pet'r Ex. 4.*
  - e. For 2015, the market adjustment value was .85. Applying the .85 factor to the 2014 value of \$37,770 results in a proposed assessed value of \$32,104 for 2015. *Schaap testimony; Pet'r Ex. 5.*

## ANALYSIS

17. The Board finds that the assessed values should be changed for each year at issue and it reached that decision for the following reasons:
- a. Real property is assessed based on its “true tax value”, which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).
  - c. There is a separate statute, however, regarding the valuation of certain rental properties such as the one at issue. Specifically, Ind. Code § 6-1.1-4-39 provides in part that the gross rent multiplier (“GRM”) method “is the preferred method of valuing...real property that has at least one (1) and not more than four (4) rental units...”. In this case, there is undisputed evidence that Petitioner has not responded to information requested by Respondent regarding the GRM.

### 2012 Assessment

- a. As stated above, Respondent had the burden of proof for 2012, but conceded to a reduction to \$46,500 for that year.
- b. Petitioner offered a USPAP compliant appraisal in which the appraiser valued the subject property at \$46,500. The appraiser relied on the sales comparison approach in reaching his conclusion and estimated a value as of March 1, 2011, which is 12 months before the relevant March 1, 2012 valuation date. The Board has repeatedly found that appraisals occurring within one year of the relevant valuation date are

temporally sufficient to show a property's true tax value. In this case, as stated, Respondent agreed to a \$46,500 value for 2012.

- c. Petitioner, however, contends that the appraised value should be lowered by trending it to the March 1, 2012, valuation date. Petitioner attempted to trend the appraised value to the 2012 valuation date by applying the market adjustment value of .95 shown on the 2011 PRC.
- d. While the market adjustment value appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that factor in this case is not reflective of the overall annual trending factor for 2012 because the total assessed value changed at a different rate from 2011 to 2012. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessed value. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995). Respondent did, as discussed above, agree to accept an assessed value of \$46,500 for 2012 based on Petitioner's appraisal. Therefore, the Board finds that the 2012 assessed value should be \$46,500.

#### 2013 Assessment

- a. Because the 2013 original assessed value of \$66,700 represents an increase over the 2012 assessed value of \$46,500, Respondent has the burden for 2013. Respondent, however, conceded to an assessed value of \$45,900. Petitioner subsequently requested a further reduction. For the same reasons that were discussed with regard to Petitioner's 2012 proposed value, the Board finds that Petitioner similarly did not provide credible evidence to support its 2013 proposed value. Accordingly, the Board accepts Respondent's concession and finds that the 2013 assessed value should be changed to \$45,900.

#### 2014 and 2015 Assessments

- a. The Board ultimately finds that the assessed values for 2014 and 2015 will also each be changed to \$45,900. Because the original assessed values for each of those years represent increases from each respective previous year's value of \$45,900, Respondent has the burden of proving that the assessed values for 2014 and 2015 are correct.
- b. Respondent did not offer any evidence to prove that the original assessed values for 2014 and 2015 are correct. In the alternative, Respondent offered to accept a value of \$46,600 for each year. However, that value is an increase over the appraisal value and Respondent similarly did not offer any evidence to prove that it is correct for either year.

- c. As was the case for 2012 and 2013, Petitioner requested further reductions for 2014 and 2015. For the same reasons that were discussed with regard to Petitioner's 2012 and 2013 proposed values, the Board finds that Petitioner similarly did not provide credible evidence to support its values for 2014 or 2015.
- d. If an assessor fails to meet its burden and neither party offers probative evidence to show the property's actual true tax value, the assessment reverts to the previous year's level. Ind. Code § 6-1.1-15-17.2(b). Accordingly, the Board finds that the 2014 and 2015 assessed values should each be changed to \$45,900.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012 assessed value should be changed to \$46,500 and the 2013 – 2015 assessed values should each be changed to \$45,900.

ISSUED: December 8, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.